In the High Court of Punjab and Haryana, Chandigarh.

C.W.P. No.2771 of 1997

Date of Decision: 15.11.2006

Balram son of Sh.Mohan Lal. …Petitioner

Versus

Union of India and Others. …Respondents.

CORAM: HON'BLE MR. JUSTICE M.M.KUMAR

Present: Ms.Shashi Ghuman, Advocate for the Petitioner.

Mr.Kamal Sehgal, Additional Central Government Standing Counsel for the respondents.

JUDGMENT

M.M.KUMAR, J.

The petitioner who was working as Safai Karamchari in the Central Reserve Police Force (C.R.P.F.) has sought the indulgence of this Court for quashing order dated 7.10.1995 (Annexure P3) dismissing him from service with effect from 7.10.1995 in pursuance to powers conferred upon the competent Authority under Section 11(1) of the Central Reserve Police Force Act, 1949, read with Rule 27(a) of the Central Reserve Police

Force Rules, 1955. The appellate order dated 31.1.1996 (Annexure P5) passed by the Deputy Inspector General of Central Reserve Police Force upholding the view taken by the Punishing Authority as also the order dated 26.8.1996 (Annexure P6) passed by the Inspector General of Central Reserve Police Force (revisional authority) have also been challenged as the petitioner had been found to be unauthorized absent from duty from 14.1.2005 to 10.6.1995.

Brief facts of the case, necessary for disposal of the controversy raised in the instant petition, are that the petitioner was appointed as Safai Karamchari in Central Reserve Police Force in 1989. On 16.12.1994 he was granted leave for eight days by the Headquarter with effect from 16.12.1994. However, on the expiry of the leave period, the petitioner appeared before T.C. Jammu and explained that on account of the illness of his mother he was keen to seek extension by reaching Srinagar. On account of heavy snow fall, the Jammu-Srinagar Highway was blocked and the convoy passage was not available. Accordingly, T.C. Jammu gave the petitioner casual leave for ten days with effect from 2.1.1995 to 13.1.1995. The petitioner did not report for duty on the excuse that the health of his mother was deteriorating who was stated to be suffering from Cardiac Artery Disease and Hypertension. Again an application for further extension of leave for 30 days to the office of Commandant, respondent No.2, was sent. The application for extension of leave for 30 days made by the petitioner was not accepted as no sanction was communicated

to him. However, the petitioner reported for duty on 10.6.1995. It is appropriate to mention that bailable warrants was issued against him on 9.3.1995 and on 1.5.1995 the Court of Inquiry was ordered against him. However, on the joining of the petitioner on 10.6.1995 the bailable warrants and Court of Inquiry were cancelled on 28.8.1995. It is further appropriate to mention that his absence from 14.1.1995 to 10.6.1995 for a total period of 148 days was regularized as extraordinary leave (leave without pay). In that regard, order dated 28.8.1995 (Annexure P2) deserves to be noticed and the same reads as under:-

> "OFFICE OF THE COMMANDANT, 32 BN, CRPF, C/056 APO
>
> No.I.X.7/95.32.EC.II Dated, the 28th Aug., 1995
>
> OFFICE ORDER
>
> No.890320031 S/K.Bal Ram of this Unit who was GSL w.e.f. 14.1.95 FN reported for duty at his own on 10.6.95 AN at Bn.HQs.Srinagar. The Court of Inquiry ordered vide this office order of even No. dated 1.5.95 is hereby cancelled.
>
> 2. His absence/OSL period from 14.1.95 to 10.6.95 total 148 days is hereby regularized as E.O.L. (Leave without pay).
>
> (Auth: Commdt's approval/sanction on note-sheet 12.6.95).

Sd/-
For Commandant 32 Bn.
No.I.X.7/95.32.EC.II Dated, the Aug.,95

Copy forwarded to:-

1. The Addl. DIGP, GC, CRPF, Hyderabad (in duplicate)
2. OE/F-Coy 32 Bn. CRPF for information.
3. The FOC/32 Bn. For publication".

Sd/-
For Commandant 32 Bn."

Despite the aforementioned order, Commandant-respondent No.2, vide order dated 7.10.1995 (Annexure P3) proceeded with the enquiry and recorded the finding that the petitioner was guilty of absence from duty without sanction of leave for a period of 148 days from 14.1.1995 to 10.6.1995. The finding of the Commandant, respondent No.2, are discernible from para Nos.4 & 5 of the order, which read as under:-

"4. However, to meet the end of the justice he was handed over a copy of the enquiry report conducted by Shri P.K.Salunke, A/C offering the opportunity to submit defence statement/representation, if any, under the provision of Rule 15 & 17 of CCS (CCA) Rules, 1965 vide this office letter No.P.VIII.7/95.32.EC.II dated 11.9.95 on the enquiry report within 15 days from the date of receipt of letter, but the individual again pleaded guilty vide his application dated 16.9.95 and he has not brought any new facts.

> 5. No.890320031 S/K Bal Ram of F/32 Bn. CRPF unauthorized absented himself from leave/OSL from 14.1.95 to 10.6.95, without any leave or proper permission from the competent authority. Hence, I find him guilty as per the report. In view of the gravity of the offence committed by him, he is not a fit person to be retained in the Force. I, therefore, under the powers conferred upon me under Sec.11(1) of the CRPF Act, 1949, read with Rule 27(a) of CRPF Rules, 1955, hereby impose the penalty of dismissal from service on him w.e.f. 7.10.95 (FN)".

The petitioner filed an appeal before the Deputy Inspector General of Central Reserve Police Force, under Rule 28 and the same was dismissed vide order dated 31.1.1996 (Annexure P5) and the punishment has been maintained. The revision petition filed by the petitioner under Section 29 had also been rejected on 26.8.1996 (Annexure P6).

Ms.Shashi Ghuman, learned counsel for the petitioner has argued that once the period of 148 days commencing from 14.1.1995 to 10.6.1995 has been regularized by treating the same as extraordinary leave without giving any pay vide order dated 28.8.1995 it was not open to Commandant, respondent No.2 to once again initiate disciplinary proceedings against the petitioner. According to the learned counsel, the period of 148 days of absence has been accepted by the Commandant, respondent No.2, as extraordinary leave and no pay was to be paid for that

period. The period of 148 days, infact, stood regularized and even the Court of Inquiry ordered to be held against the petitioner was cancelled. In support of her submission, learned counsel for the petitioner has placed reliance on three judgments of this Court in cases of **"State of Haryana v. Satish Chander" 2000(3) PLR 690**, **"Atma Ram Sharma v. Union of India and Another" 1996 (4) R.S.J. 422**, and **"Joginder Lal v. The Presiding Officer, Labour Court, Ambala" 1996(1) SCT 436** and argued that the charge of absence did not survive, where absence was condoned by treating the period of absence as extraordinary leave (leave without pay).

Mr.Kamal Sehgal, learned counsel for the respondents, however, contends that grant of extraordinary leave (leave without pay) to the petitioner vide order dated 28.8.1995 (Annexure P2) for 148 days from 14.1.1995 to 10.6.1995 would not create a bar for respondents to initiate a disciplinary action against the petitioner. According to learned counsel for the respondents, the petitioner was issued the charge sheet in respect of absence from duty and disobedience of orders dated 21.1.1995 and 10.2.1995, whereby he was directed to report for duty, immediately, whereas he infact reported for duty only after the issuance of warrants of arrest against him on 9.3.1995, which was later on cancelled.

After hearing learned counsel for the parties, I am of the considered view that the proceedings initiated against the petitioner charging him with absent from duty for the period

commencing from 14.1.1995 to 10.6.1995 in the face of the order dated 28.8.1995 (Annexure P2) were held without the sanction of law because the aforementioned period stood regularized as extraordinary leave (leave without pay) on 28.8.1995. After regularization of 148 days period of absence from duty as extraordinary leave, there was no room for the respondent to charge the petitioner in respect of the same period with the allegation that he remained absent from duty without sanction of leave by the competent Authority or that he had disobeyed the order asking him to join duties during that period. It has not been disputed that the order dated 28.8.1995 has continued to operate and has neither been reviewed nor withdrawn by the competent Authority. It was in these circumstances that this Court in the **"State of Punjab v. Chanan Singh" 1988(3) All India Services Law Journal 216** has held that once the period of absence is treated as leave of the kind due, then the charge of absence from duty does not survive. Similar view has been expressed by this Court in the case of **Satish Chander (Supra)** and **Atma Ram Sharma (Supra)**. In Atma Ram Sharma's case, the employee was prematurely retired from service on the allegation that he remained absent from duty. In respect of the aforementioned absence from duty for a period of five years, the employee had already been reinstated and his absence was to be treated as duty period, which was regularized by giving him leave of the kind due. It was in these circumstances that this Court set aside the order of premature retirement by observing as under:-

"The question that arises is – As to what was the material with the respondents to form an opinion that it was in public interest to retire the petitioner prematurely on completion of 30 years of qualifying service? From the record, I find that the only reason was the absence of the petitioner for about five years. Once the petitioner was reinstated in service and his period of absence was treated on duty and that period was regularized by giving leave of the kind due, as is apparent from the order dated December 11, 1993 and the earlier orders dated November 29, 1990 and May 25, 1992 issuing proforma posting of the petitioner – Can it be said that the petitioner remained absent for that period? The explanation of the petitioner was found satisfactory and only then he was reinstated in service. The period of alleged absence having been treated as the leave of the kind due, the petitioner would deemed to be in service for that period. Now the respondents cannot turn around and say that, in fact, the petitioner was absent during that period. Physically, though he was absent but the fact remains is that the period has been treated as leave of the kind due. It will be contradictory that on one side the respondents are saying that the petitioner was absent and on the other hand he was on leave of the kind due. According to me, this cannot be the basis for

forming an opinion that the petitioner was to be retired prematurely in public interest. The order of premature retirement and the orders rejecting the representation of the petitioner are liable to be quashed".

On principle as well as precedent, it is evident that the petitioner could not be charge sheeted in respect of the period he was sanctioned extraordinary leave and his period of absence was regularized. Accordingly, the writ petition deserves to be allowed.

In view of the above, this petition succeeds and the orders dated 7.10.1995 (Annexure P3), 31.1.1996 (Annexure P5) and 26.8.1996 (Annexure P6) passed by respondents No.2 to 4 are hereby quashed. The respondents are directed to reinstate the petitioner in service and grant him all the consequential benefits including salary, increment, promotion etc. The needful shall be done within a period of three months, from the date a certified copy of this order is received by them.

November 15, 2006 **(M.M.KUMAR)**
dkb **Judge**